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UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,424	08/28/2001	Curtis E. Jutzi	42390P11870	7220

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EXAMINER
AU, GARY

ART UNIT	PAPER NUMBER
2617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	09/941,424	JUTZI, CURTIS E.
	Examiner	Art Unit	
	Gary Au	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 November 2006</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-18</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-18</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/2006 has been entered.

Response to Arguments

2.   Applicant's arguments filed 11/20/2006 have been fully considered but they are not persuasive.

For applicant's argument that Herz and Bedard do not teach or suggest sorting the vectors with the highest reference count and lowest standard deviation, the argument is not persuasive. Herz teaches sorting the vectors with respect to standard deviation and reference count (col. 5 line 66 – col. 6 line 13 and col. 15 lines 34-43).

In conclusion, the applicant's claims are written in such a fashion that the limitations read on Herz and Bedard.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

5,758,257 Herz et al. (Herz) and further in view of US Patent No. 5,801,747 (Bedard).

As to claim 1, Herz teaches a method comprising: for a customer of a broadcast

service, determining, by executing server software (it is noted that the server software is

within system controller 506 or 606 to be executed for scheduling the presentation of

the program materials according to the data stored on the data collection memory 508 –

figure 5 and 6, col. 42 lines 1-11), predicted content (video programming from virtual

channel, col. 45 lines 34 – 55) that the customer's client software (within set top terminal

- figure 9, col. 45 lines 9-33) is expected to acquire from the service on behalf of the

customer, based on (1) billing information (updated customer profiles) for the customer

received from the customer's client software and that describes previously broadcast

content acquired by the client software on behalf of the customer (the updated customer

profile containing information about the viewing history is sent from the set top

multimedia terminals to the head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29

lines 52-67, col. 41 line 57 - col. 42 line 11), and (2) a description of available content

(content profiles, col. 11 lines 45-58) that will be available for broadcast by the service

and that can be acquired by the plurality of customer's client software (the highest

matched programs are selected for presentation as virtual channel based on the content

profile and customer profile, col. 25 lines 16-30, col. 24 line 56 – col. 25 line 6); wherein

one or more vectors describe the predicted content (content profiles, col. 11 lines 45-

58); Herz also teaches a weighing function based upon standard deviation (col. 12 lines

56-64 and col. 13 lines 40-54); *sorting the remaining one or more vectors based on*

standard deviation (col. 5 line 66 – col. 6 line 13 and col. 15 lines 34-43); *and*

determining top n vectors from the sorted one or more vectors to become part of a

personal profile for the customer (col. 5 line 66 – col. 6 line 13 and col. 15 lines 34-43).

However, Herz does not teach removing vectors from the one or more vectors that have

a reference count lower than a determined value, wherein the removed vectors are

determined to not be valuable for describing the predicted content.

In an analogous art, Bedard teaches removing vectors from the one or more

vectors that have a reference count lower than a determined value, wherein the

removed vectors are determined to not be valuable for describing the predicted content

(col. 6 line 63 – col. 7 line 6).

Therefore, it would have been obvious for one of ordinary skill in the art at the

time the invention was made to modify Herz's system to include removing vectors from

the one or more vectors that have a reference count lower than a determined value,

wherein the removed vectors are determined to not be valuable for describing the

predicted content, as taught by Bedard, for the advantage of keeping an updated viewer

profile.

As to claim 2, Herz teaches that the available content includes digital movies that can be watched by the customers (col. 24 line 56 – col. 25 line 6).

As to claim 3, Herz teaches that the available content includes digital audio recordings that can be listened to by the customers (col. 49 lines 32-51).

As to claim 4, Herz teaches that the billing information is taken from one or more billing logs received from the customer's client software (the customer profile is sent to the head end, col. 41 line 57 – col. 42 line 11) and that identify the customer (by customer identifier interface 918 - figure 9, col. 45 line 56 – col. 46 line 18), the previously broadcast movies acquired by the client software on behalf of the customer (col. 25 lines 45-48, col. 29 lines 52-66, col. 41 lines 4-18), and the fraction of each acquired movie that was actually played back as determined by the client software (the set top multimedia terminal maintains a record of the watched channel for a period of time, col. 25 lines 31-44).

As to claim 5, Herz teaches that the predicted content for each customer is determined by performing an algorithm in the server software (the agreement matrix) that computes the relevance of one or more categories in which a movie can be placed to what the client software can acquire from the service on behalf of the customer, based on a description of the previously broadcast content identified in the billing information and that includes the one or more categories for each previously broadcast

movie (the agreement matrix is created by comparing the characterization of the

customer profile and content profile under categories such as film genres, directors, and

MPAA rating, col. 11 lines 45-58, col. 25 lines 16-30).

As to claim 6, Herz teaches that the predicted content for each customer is

determined by further performing an algorithm in the server software that selects from

among the available content a predicted movie whose one or more categories match

the most relevant categories that were computed on behalf of the customer (the

programs with the highest matching value with the customer profile and content profile

is selected for presentation as virtual channels, col. 25 lines 16-30).

As to claim 7, Herz teaches a machine-readable medium (Within 506 – figure 5,

col. 42 lines 1-11) having a plurality of instructions stored therein which when executed

by a processor (system controller 506 or 606 – figure 5 and 6, col. 42 lines 1-11) cause

an electronic system to support a broadcast service by determining, for a customer of

the broadcast service, predicted content (video programming from virtual channel, col.

45 lines 34 – 55) that the customer's client software (within set top terminal - figure 9,

col. 45 lines 9-33) is expected to acquire from the service on behalf of the customer,

based on (1) billing information (updated customer profiles) for the customer received

from the customer's client software and that describes previously broadcast content

acquired by the client software on behalf of the customer (the updated customer profile

containing information about the viewing history is sent from the set top multimedia

terminals to the head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29 lines 52-67,

col. 41 line 57 - col. 42 line 11), and (2) a description of available content (content

profiles, col. 11 lines 45-58) that will be available for broadcast by the service and that

can be acquired by the plurality of customers' client software (the highest matched

programs are selected for presentation as virtual channel based on the content profile

and customer profile, col. 25 lines 16-30, col. 24 line 56 – col. 25 line 6), wherein one or

more vectors describe the predicted content (content profiles, col. 11 lines 45-58). Herz

also teaches a weighing function based upon standard deviation (col. 12 lines 56-64

and col. 13 lines 40-54); *sorting the remaining one or more vectors based on standard*

deviation (col. 5 line 66 – col. 6 line 13 and col. 15 lines 34-43); *and determining top n*

vectors from the sorted one or more vectors to become part of a personal profile for the

customer (col. 5 line 66 – col. 6 line 13 and col. 15 lines 34-43). However, Herz does

not teach removing vectors from the one or more vectors that have a reference count

lower than a determined value, wherein the removed vectors are determined to not be

valuable for describing the predicted content.

In an analogous art, Bedard teaches removing vectors from the one or more

vectors that have a reference count lower than a determined value, wherein the

removed vectors are determined to not be valuable for describing the predicted content

(col. 6 line 63 – col. 7 line 6).

Therefore, it would have been obvious for one of ordinary skill in the art at the

time the invention was made to modify Herz's system to include removing vectors from

the one or more vectors that have a reference count lower than a determined value,

wherein the removed vectors are determined to not be valuable for describing the

predicted content, as taught by Bedard, for the advantage of keeping an updated viewer

profile.

As to claim 8, see rejection of claim 2.

As to claim 9, see rejection of claim 3.

As to claim 10, see rejection of claim 4.

As to claim 11, see rejection of claim 5.

As to claim 12, see rejection of claim 6.

As to claim 13, Herz teaches a server (head end 502 – figure 5, col. 41

line 57 – col. 42 line 11) to determine, for each of a plurality of customers of the

broadcast service, predicted content (video programming from virtual channel, col. 45

lines 34 – 55) that the customer's client software (within set top terminal - figure 9, col.

45 lines 9-33) is expected to acquire from the service on behalf of the customer, based

on (1) billing information (updated customer profiles) for the customer received from the

customer's client software and that describes previously broadcast content acquired by

the client software on behalf of the customer (the updated customer profile containing

information about the viewing history is sent from the set top multimedia terminals to the

head end 502 – figure 5, col. 25 lines 7-15, 45-48 , col. 29 lines 52-67, col. 41 line 57 -

col. 42 line 11), and (2) a description of available content (content profiles, col. 11 lines

45-58) that will be available for broadcast by the service and that can be acquired by the

plurality of customers' client software (the highest matched programs are selected for

presentation as virtual channel based on the content profile and customer profile, col.

25 lines 16-30, col. 24 line 56 – col. 25 line 6), wherein one or more vectors describe

the predicted content (content profiles, col. 11 lines 45-58). Herz also teaches a

weighing function based upon standard deviation (col. 12 lines 56-64 and col. 13 lines

40-54); *sorting the remaining one or more vectors based on standard deviation* (col. 5

line 66 – col. 6 line 13 and col. 15 lines 34-43); *and determining top n vectors from the*

sorted one or more vectors to become part of a personal profile for the customer (col. 5

line 66 – col. 6 line 13 and col. 15 lines 34-43). However, Herz does not teach removing

vectors from the one or more vectors that have a reference count lower than a

determined value, wherein the removed vectors are determined to not be valuable for

describing the predicted content.

In an analogous art, Bedard teaches removing vectors from the one or more

vectors that have a reference count lower than a determined value, wherein the

removed vectors are determined to not be valuable for describing the predicted content

(col. 6 line 63 – col. 7 line 6).

Therefore, it would have been obvious for one of ordinary skill in the art at the

time the invention was made to modify Herz's system to include removing vectors from

the one or more vectors that have a reference count lower than a determined value,

wherein the removed vectors are determined to not be valuable for describing the

predicted content, as taught by Bedard, for the advantage of keeping an updated viewer

profile.

As to claim 14, see rejection of claim 2 and 8.

As to claim 15, see rejection of claim 3 and 9.

As to claim 16, see rejection of claim 4 and 10.

As to claim 17, see rejection of claim 5 and 11.

As to claim 18, see rejection of claim 6 and 12.

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Gary Au whose telephone number is (571) 272-2822.

The examiner can normally be reached on 8am-5pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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